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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/789,074

02/27/2004

Dennis S. Greywall

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EXAMINER

LAZORCIK, JASON L

ART UNIT

PAPER NUMBER

1791

MAIL DATE

DELIVERY MODE

12/26/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/789,074

Applicant(s)

GREYWALL, DENNIS S.

Examiner

Jason L. Lazorcik

Art Unit

1791

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 December 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL -324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because:

Response to Arguments

Applicant's arguments filed December 12, 2007 have been fully considered but they are not persuasive.

With respect to the rejection of claim 1 under 35 U.S.C. 102(b) as anticipated by Roeder, Applicant asserts that the claimed method requires drawing a glass containing carbon particles so as "to form at least one carbon fiber from said carbon particles".

Applicant argues that the claimed method is distinguished over the Roeder process since the prior art method "discloses a method of embedding already formed fiber bundles into a glass matrix for the production of a composite material". Applicant continues asserting that Roeder requires that "a prefabricated ... fiber bundle is impregnated with glass" and that said bundle is "already existing (and) previously formed".

Although Applicant acknowledges that Roeder teaches separating a stock carbon fiber into individual filaments or individual carbon particles, Applicant argues that the preliminary stock fiber never ceases to exist. Applicant concludes that since the stock carbon fiber never ceases to exist, the prior art can not form a fiber from the individual carbon filaments.

Applicant's argument on this matter is held to be unpersuasive.

As set forth in the Office action dated October 29, 2007, Roeder explicitly teaches that the "individual filaments separate from one another" (page 4) and through the subsequent drawing process, said "individual filaments" or particles are drawn to form a consolidated "fiber". Applicant's arguments directed to the nature of the loose bundle of filaments do not materially rebut the fact that individual carbon particles are drawn to form at least one fiber.

Next, Applicant purports a distinction between the carbon filaments set forth in the Roeder disclosure and the carbon particles required in the pending claim 1. Specifically, Applicant presents a definition from Merriam -Webster's Collegiate Dictionary relating a particle as "a minute quantity or fragment" or a relatively small or the smallest discrete portion or amount of something".


Applicant's argument on this matter is held to be unpersuasive.

It is first noted that Applicant has supplied no explicit definition for a particle in the specification as originally filed. Next, even accepting Applicant's chosen definition of "a particle", it is in no manner evident to the Examiner why the prior art carbon filament would not meet every requirement of said definition. Specifically, it would appear to the examiner that, absent any compelling evidence to the contrary, the prior art filament may appropriately be construed at least as a minute quantity or fragment. For this reason, Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

With respect to the rejection of claim 45 under 35 U.S.C. §102(b), Applicant argues that the claim requires a step of "dispersing carbon particles within a form of liquid glass to form a sol-gel solution. Applicant argues that the Roeder process disperses glass particles in alcohol and that the carbon fiber bundle remains structurally intact. Applicant concludes that Roeder teaches that solid glass particles are "simply aggregated" within the filament bundle.

The Examiner strongly disagrees.

As set forth on pages 4-5 of the October 29, 2007 Office Action, Roeder teaches (page 14 of English language translation) that the filament bundle "can be impregnated either by a suspension process ... or by the sol-gel method (German Patent No 1941191 ...), wherein the fiber bundle is immersed in a solution of metal alcoholates." Applicant's allegation that Roeder fails to teach the requisite sol-gel processing is held as a clear misrepresentation of the prior art teachings.


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